

## **Cemetery Board Minutes**

**DRAFT**

**July 14, 2020**

**Via WebEx**

### **BOARD MEMBERS PRESENT:**

Mark Pattison, Department of State, Chair  
Jill Faber, Office of the New York Attorney General  
Thomas Fuller, Department of Health

### **OTHER ATTENDEES**

Joseph Ambrose, Division of Cemeteries	Chris Cosco, Division of Cemeteries
Vince Gimondo, Division of Cemeteries	Andrew Hickey, Division of Cemeteries
Kerry McGovern, Division of Cemeteries	Lewis Polishook, Division of Cemeteries
Michael Seelman, Division of Cemeteries	Brendon Stanton, Division of Cemeteries
Joshua Beams, Dep't of State	John Fatato, Dep't of State
Antonio Milillo, Dep't of State, Counsel	Robert Vanderbles, Dep't of State

### **GUESTS:**

David Fleming, NYSAC, Featherstonhaugh, Wiley & Clyne  
Brendan Boyle, NYSAC, FWC  
Bruce Geiger, Bruce Geiger & Assocs. for Pinelawn Memorial Park  
Brian Groblewski, Pinelawn Memorial Park  
Justin Locke, Pinelawn Memorial Park  
David Flynn, Oxford Hills Crematory  
Ralph Schoene, Counsel for Oxford Hills  
Gordon Zuckerman, President, Vale Cemetery  
Clark Adams, Superintendent, Vale Cemetery  
Rich Moylan, Green-Wood Cemetery  
Jay Ivler, Mt. Lebanon Cemetery  
Joe Dispenza, Forest Lawn Group  
Nate Romagnola, White Haven Memorial Park  
Yvette Buckner, Better Place Forests  
NondiChhabro, Better Place Forests  
Mark Cuthbertson, Law Offices of Mark Cuthbertson

### **Opening Remarks**

Mr. Pattison gave an overview of how the meeting would proceed via WebEx.

Mr. Milillo explained that the meeting is operating pursuant to Executive Order 202.1, which suspends the requirement to appear in person. The notice was posted in accordance with law and notice, agenda, and materials were posted on the Division of Cemeteries website.

We take attendance; lobbyists must identify themselves and the entity they represent; speakers are asked to identify themselves.

## **20-07-A-37 Minutes of Previous Meeting**

Motion was made, seconded, and unanimously adopted approving the minutes of the June 9, 2020 meeting as distributed.

## **20-07-B-38 Legislation and Regulations**

### **1. Pending Legislation**

Mr. Milillo provided the legislative report. He reported that the Governor signed A 7652, S7048 on June 17; it permits cemeteries to pay third party vendors/websites a transaction fee for sale of cemetery lots, goods and services.

Two new bills were introduced: one (A10638) would amend Article 15 to move the Division of Cemeteries and Cemetery Board to the Department of Health and make the Commissioner of Health the chair of the board.

The other, A10782 would make it easier to establish a State Veterans' cemetery by easing requirements.

### **2. Rules and Regulations**

Mr. Polishook described the partial draft regulations prepared by the Division and the Board that has been shared with the Board. The partial draft regulations set out factors to determine whether a cemetery is at risk of abandonment. If the cemetery is at risk of abandonment, the Division will report a list of those cemeteries to the board. The proposal set out steps and time frames for contacting the town, performing an audit, and letting interested parties know about the situation.

Before and separate from this process, the Division intends to write to towns to let them know of the regulated cemeteries within their boundaries, that the towns can request annual reports and trustee lists from the Division, that if a regulated cemetery becomes abandoned the town must maintain and preserve it, and that General Municipal Law section 165-a allows towns to provide assistance to cemeteries.

Next steps include sharing the draft with stakeholders (NYSAC and NYS AOT) and drafting regulations for the determination and process of abandonment and cemetery-to-cemetery abandonment.

Ms. Faber asked what the mechanism for cemetery-to-cemetery transfers will be.

Mr. Milillo explained that the statute requires Board approval of cemetery-to-cemetery abandonment.

Mr. Fuller asked whether towns must maintain cemeteries that were not regulated and become abandoned. Mr. Milillo added that the law permits municipalities to take over certain cemeteries but towns are required to take over only those cemeteries operated as a burial grounds for the public. Mr. Polishook added that the Attorney General often has a role in approving the sale of church assets, and that the Attorney General will seek to provide for the cemetery as part of the sale.

Mr. Polishook added that problems with church cemeteries often involve churches that are less active or are taken over by a new congregation, and that this is more common than church cemeteries being abandoned when a church ceases to exist.

### **20-07-C-38 Division Report**

Mr. Polishook stated that the backlog in cremations and burials is over. The number of remains awaiting cremation has remained stable at 150. Last week's number of burials was actually lower than the average week in 2019.

Mr. Polishook reported on a call with State representatives on the Mortuary Affairs Task Force, NYSAC, and NYSFDA concerning planning for a possible second wave.

Ms. Young provided the Division's report on quarterly statistics on the Division's performance of delegated duties in the first and second quarters of 2020: rate applications, reclamations, society reclamations, and rules and regulations.

### **20-07-D-39 Vandalism, Abandonment and Monument Repair or Removal Fund Report**

So far in the 2020 calendar year the Division has collected \$434,839 in vandalism funds. Assessment collections total \$250,092.

In the 2020 fiscal year, beginning April 1, 2020, vandalism funds collected total \$50,507, and assessment funds \$33,263.

To date, the Board has approved \$776,39782 remains unpaid from previous years' applications, leaving \$1,223,620.64 for new applications, assuming \$2,000,000 in appropriation and cash. for repair of hazardous

\$147,057.10 in applications have been approved this fiscal year; \$101,658.15 goes before the Board this month.

The Board discussed two vandalism fund applications for repair of hazardous monuments:

Oakwood Cemetery (42-034), requesting: \$66,505.78 for hazardous monuments

Howard Cemetery (51-031), requesting: \$32,152.37 for hazardous monuments

Motion was made, seconded, and unanimously adopted approving both applications, subject to availability of funds.

### **20-07-E-40 Ferncliff Cemetery (60-006) Lawn Crypt Application**

Ferncliff Cemetery in Westchester County seeks approval for 523 new lawn crypts; a portion of this project was approved at the previous meeting because the cemetery was running low on inventory. The cemetery has a proven track record of selling lawn crypt spaces and anticipates a return of \$5,794,657 on the project. The project is very similar to a previous one from 2017. The installation should take only a matter of days, the landscaping will take longer but will be done over several months.

Mr. Milillo explained that the regulations provide the Board an opportunity to object to the installation of lawn crypts but do not speak of Board approval.

After discussion, motion was made, seconded, and unanimously adopted that the Board had no objection to the application.

#### **20-07-G-42 Glenwood Cemetery (32-008) Amendment to Columbarium Application**

Glenwood Cemetery's columbarium project was approved at the Board's March 10, 2020 meeting. Subsequently, the cemetery determined that it preferred a different location for its columbarium, reposted signs, and allowed a new comment period. It has received no adverse comments.

Counsel added that the approval of a columbarium is for a specific site so it is appropriate to repost and present the matter to the Board again.

Ms. Faber asked whether the approval is of a new application or an amendment to the application. Mr. Milillo indicated that it was best to treat this as an amendment to the previously approved application.

Motion made, seconded, and unanimously adopted to approve the amendment to the columbarium application to allow for installation of the columbarium unit in a different location.

#### **20-07-F-45 Finger Lakes Crematory (26-035) – New Retort**

The Finger Lakes Crematory (the Crematory") applied for Cemetery Board approval of a cemetery renovation pursuant to 19 NYCRR Section 201.16 for the replacement of a 1974 G&S cremation retort, with a 2020 Matthews, Super-Power Pak I, cremator. The total cost of this project would be \$174,723.64 and would include purchase of the new unit, removal of the existing unit, asbestos remediation and installation of the new unit. The retort would be used as a backup to a retort that was installed in 2012.

The Division recommended that the Board deny the application based on applications the Crematory made in 2012 and the Board's action on those applications. Specifically, the Crematory applied to add a second retort and that application was denied in March 2012. According to the minutes of the July 2012 meeting the application was then changed to "install a new retort while disabling an older existing retort taking it out of service." That revised application was approved in September 2012 and the letter informing the Crematory of the approval states as follows:

Dear Mr. Dougherty:

Your application for a major renovation to take your existing crematory retort out of service but not out of the building - and to install a new retort, without increasing the building footprint and without increasing cremation capacity had been reviewed at previous meetings of the New York State Cemetery Board and was again reviewed at its September 27, 2012 meeting.

Requirements of Cemetery Board Directive 201.16 were satisfied and the Division recommended approval of the application.

The board first determined that a funeral home/crematory combination which is grandfathered from the prohibitions of the Anti-Combination Law may replace an existing retort with a new retort as long as the crematory building footprint is not increased and cremation capacity is not increased. A motion was then unanimously passed by the NYS Cemetery Board granting the cemetery permission to proceed with the renovation and taking the existing crematory retort out of service and installing a new retort. -

Nonetheless, the Crematory believed it could use the old retort as a backup to the new retort and reported that it did so once in 2017 with the knowledge and permission of Division staff while the new retort was out of service.

Peter Skivington, counsel to the Crematory, spoke in favor of the application, noting among other things the benefit to the public of having a backup retort available when the other is in need of repair. Mr. Skivington indicated that the crematory sought the replacement retort solely as backup. Mr. Skivington contended that Division representatives recommended that the crematory apply to the Board to replace the existing retort. Mr. Skivington stated that he understood the Board's previous decisions to provide only that the crematory's footprint and cremation capacity could not increase, and that this would not bar replacement of an outdated retort.

Mr. Milillo reviewed the history of the 2012 applications of the Crematory and explained that in 2012 the Board had to decide three novel issues regarding grandfathered combinations, including the application of the Crematory to replace the retort it had when the Anti-Combination law took effect with a modern, more efficient retort. He read the from the memo the Board has posted on Division's website discussing the three decisions and the portion relating to the Crematory's 2012 application reads as follows:

The third issue brought before the board was whether the operator of a grandfathered crematory could add a new retort or replace its existing retort. The crematory was operating a retort that was old and inefficient. The operator sought to add a new retort but keep the existing retort as a backup. The additional retort would fit in the existing crematory building. Previously, the Division of Cemeteries had taken the position that a grandfathered combination could replace its retort as long as the footprint of the crematory building was not increased. This application was brought before the board because it involved not just replacing a retort but adding a retort and because the work qualified as a major renovation requiring board approval. The board once again determined that the grandfather provision only protects what the crematory operator had at the time the law was passed. Adding an additional retort and thereby increasing capacity would go beyond what the crematory operator had and therefore was not permitted. The operator then modified his application so that the new retort would replace the old retort. The board determined that this was permissible since the operator would not be expanding the crematory and would not be increasing its cremation capacity other than the incidental increased capacity that comes from having a more modern, efficient retort. The board also noted the environmental benefit that would come from allowing such crematories to modernize their equipment.

Mr. Milillo noted that the crematory is asking the crematory to reopen a matter decided after lengthy review and recommended that the Board adhere to its early decision and reject the application as a matter that has already been decided.

Ms. Faber discussed her review of the record of the previous applications, and stated:

it seems clear to me that while that old retort – the 1974 retort remained on site – the intent, and I think it was expressly discussed was that it was on site only because it would be expensive and unnecessary to physically remove it, but that the approval for replacing it was really made in conjunction with the express understanding that for all intents and purposes that one was never to be operational and there was not to be a backup.

Mr. Pattison added the following:

So I agree with Jill, I think that it's not really about public interest. It's about what the statute said, and about Anti-Combination and the decisions - the board's longstanding policy not to increase capacity. I think it's clear from the record that they did contemplate the issue of a backup, they wanted it dismantled, taken out of service, so I agree that this has already been decided.

After discussion, a motion was made, seconded and unanimously approved to:

Affirm the recommendation of the Division and the previous decisions of the board in 2012. Approval of the application would be inconsistent with the prior decisions and the board is adhering to those prior decisions.

The application was thereby denied.

### **Public Comment**

David Fleming, on behalf of NYSAC, thanked the Board for apprising NYSAC of developments on the regulations. He also thanked the Director and Mortuary Affairs Task Force for its discussion yesterday of planning for a possible future second wave or another pandemic, to ensure a reasonable and fast response and to put additional steps solidly in place if needed. Mr. Fleming also thanked Mr. Fuller and the Division for working seven days a week to help cemeteries and families respond to this situation.

Motion made, seconded, and carried to adjourn the meeting.

The next Board meeting is scheduled for August 11, 2020 at 10:30 AM, via Webex and, circumstances permitting, possibly in person.